

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, Docket No. 3:18CR26

5 Plaintiffs, Toledo, Ohio

6 v. January 22, 2019

7 KARL J. ROGERS,

8 Defendant.

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10 TRANSCRIPT OF PHONE CONFERENCE
11 BEFORE THE HONORABLE JAMES G. CARR
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Plaintiffs: Tracey Ballard Tangeman
15 Matthew D. Simko
16 Office of the U.S. Attorney
Four SeaGate, Suite 308
Toledo, Ohio 43604
(419) 242-5675

17 For the Defendant:

18 Reese M. Wineman
19 6 West Main Street
Norwalk, Ohio 44857
(419) 668-6840

20
21 Court Reporter: Angela D. Nixon, RMR, CRR
22 1716 Spielbusch Avenue
23 Toledo, Ohio 43624
(419) 260-5259

24 Proceedings recorded by mechanical stenography, transcript
25 produced by computer-aided transcription.

1 MR. WINEMAN: Reese Wineman for the defendant.

2 MR. SIMKO: Matt Simko, attorney for the
3 government.

4 THE COURT: Anybody else?

5 COURTROOM DEPUTY: Just the court reporter,
6 Judge.

7 THE COURT: Okay. And is it Stacey or --

8 COURTROOM DEPUTY: It's Angela.

9 THE COURT: I'm not going to take the next 45
10 minutes to tell you, coming to Albany airport at 6:15
11 yesterday morning and now just boarding a plane, much
12 delayed plane, earlier than 20 minutes before boarding it.

13 Anyway, two things, I understand that the
14 government's filed a motion in limine to exclude any effort
15 to suggest that there was a Fourth Amendment violation in
16 the course of the search of the computer and so forth.
17 I've got a real problem with that. If there's -- if it's
18 an issue, that should have been raised. If it's not an
19 issue, then it's not relevant. I know, Reese, you wanted
20 to make a response, but I'm just trying to cut to the
21 chase, but if you think you can persuade me somehow it's
22 relevant, that's fine. I'm more than glad to have you give
23 me a brief and go from there.

24 But, you know, to suggest to the jury that
25 something's wrong with the government's conduct is not

1 permissible. I mean, that's -- in other words, had you
2 filed a motion to suppress, and had it been successful, or,
3 say, partial motion to suppress, well, then you couldn't
4 tell the government -- you couldn't tell the jury, you
5 know, some search was bad, and there's evidence they're not
6 going to get to see because it was bad. Wouldn't do that
7 and couldn't do it, so I just -- I can't see any basis on
8 what you can say -- suggest to the jury that the government
9 did anything improper. Your client will describe in a
10 factual basis what they did. And if the government wants
11 to, I suppose I can simply say that regardless of the
12 defendant's account, the evidence is properly admitted and
13 properly to be considered by you, that in terms of the
14 government's conduct, it does not affect the admissibility
15 of the evidence. If that's what you are talking about,
16 that he somehow feels aggrieved or insulted by, you know,
17 what was done to him, well, I have no problem with letting
18 him say so, but that can't be suggested as any way of being
19 illegal or in any way affecting the -- the weight and
20 credence of the evidence.

21 MR. WINEMAN: Yeah, I understand that, Judge. I
22 was -- I was fortunate you called, I was just preparing a
23 motion to continue the trial to be honest with you. It's
24 been -- I had a meeting scheduled with the client
25 yesterday, and because of the inclement weather he wasn't

1 able to make it in.

2 THE COURT: I couldn't hear you. There's an
3 announcement on the place. Because of what?

4 MR. WINEMAN: Yeah, Judge, I had a meeting
5 scheduled with the client yesterday to go over that motion,
6 plus the jury instructions that we got last week, and I was
7 never able to -- he wasn't able to get in because of the
8 weather here.

9 THE COURT: Yeah.

10 MR. WINEMAN: And we have not had an opportunity
11 to review the proposed jury instructions by The State, and
12 I was preparing a motion to continue the trial because I
13 believe we need -- we're going to need more time to review
14 some of the documents that we've got from The State and the
15 motions.

16 THE COURT: When did you -- how much stuff do you
17 have -- first of all, the jury instructions are probably
18 ones that I've given before. If they're not, then call my
19 office and I'll get the same instructions I gave at the
20 last one of these trials I had, I'll give in this case. I
21 don't know if the government's cognizance of those or not,
22 but Deanna can send that -- remember that case, Deanna, you
23 can find those instructions and send them. I can't
24 remember the name, I can't remember who tried it, but, you
25 know, they're retrievable somehow. So that shouldn't be an

1 issue.

2 And I -- it's pretty much boiler plate standard
3 kind of stuff, but there's nothing -- don't worry about
4 that. And I also have what I call the wrap around initial,
5 you know, tell them what their duties are and not to go
6 shopping outside the courtroom for information, what
7 evidence credibility is, and I charge them on the elements
8 of offense.

9 MR. WINEMAN: Right.

10 THE COURT: And then, you know, given the
11 proposed instruction at the end about deliberation, so
12 that's the way that will work. But they're very standard,
13 so I wouldn't worry too much. But what about the
14 discovery, what's the problem with --

15 MR. WINEMAN: Well, there's another motion that's
16 been filed about the identification by the individual
17 victims.

18 THE COURT: I couldn't hear you, Reese.
19 Identification of whom?

20 MR. WINEMAN: A motion -- hold on just a minute,
21 Your Honor.

22 MR. SIMKO: I think we -- this is Matt Simko for
23 the government. I think we had suggested a stipulation as
24 to the age of the victims, or in the alternative we were
25 prepared to.

1 THE COURT: What was the stipulation?

2 MR. SIMKO: As to the age of the victims, that
3 they were minors, otherwise we --

4 THE COURT: Okay.

5 MR. SIMKO: Otherwise we have people to come in
6 and testify to that fact, but we were hoping to get a
7 stipulation.

8 THE COURT: Is there a problem with that? Is
9 that in dispute?

10 MR. WINEMAN: Well, Your Honor, I have -- again,
11 because he was unable to come into the office, I have not
12 been able to review that with him.

13 THE COURT: What else haven't you been able to
14 review?

15 MR. WINEMAN: Let's see, jury instructions,
16 stipulation and the motion in limine. And I think that's
17 pretty much it.

18 THE COURT: Okay. Well, that -- you know,
19 there's still ten days before trial. I mean, and
20 there's -- I'm sorry, there's no reason to continue it.
21 The government, I'm sure, has many witnesses from out of
22 town and so forth, and it's prepared. And it would be one
23 thing if there was this last minute flurry of stuff you
24 needed to -- that they dumped, you know, eight hours worth
25 of videos on you or whatever, but that would be different,

1 or tape recordings or anything else of that sort.

2 MR. WINEMAN: Right. Okay.

3 THE COURT: That's not the issue.

4 MR. WINEMAN: You said about ten days until the
5 trial?

6 THE COURT: Yeah, I think it's the first full
7 week of February. And I can't recall when we pick the
8 jury, I think I would expect, candidly -- I assume your
9 client's not likely to testify or whatever testimony he
10 gave would be pretty brief. And that the government's --
11 hold on one second. And what's the government's best
12 estimate of how long it's going to take for the case in
13 chief?

14 MR. SIMKO: I think probably two days.

15 THE COURT: Okay. And Deanna, I can't remember
16 the time table. Is the jury going to be picked by the
17 Magistrate Judge?

18 COURTROOM DEPUTY: Voir dire is on Friday,
19 February 1st, in front of Magistrate Knepp, and then we
20 start trial on February 5th, Tuesday.

21 THE COURT: Yeah, good. The government's case
22 should be -- why don't we just -- I'm not a stop watch,
23 time clock judge, why don't you guys simply make sure we
24 get done by 4:30 on Tuesday, and then, Reese, whatever case
25 you have, put on on Wednesday morning, and I will expect to

1 charge the jury and do closing argument on Wednesday
2 afternoon. I mean, if that doesn't work for whatever
3 reason, then what I would do is have closing argument --
4 charge the jury and closing argument on Thursday morning.
5 In other words, I don't believe in splitting the two. I'm
6 not going to give the charge and then have the -- I think
7 it's important, to the extent that I can, I think it's
8 important to have the charge in the -- so I'm being told
9 I've got to turn my stuff off, and that's what I'm doing.
10 And unless there's something else -- if there is, Deanna,
11 have -- talk -- have them talk to me tomorrow, okay?

12 COURTROOM DEPUTY: Okay, Judge.

13 THE COURT: And Deanna, if I don't reach -- tell
14 them I'm boarding. Thanks, folks, that will conclude this
15 proceeding. If you need to talk to me further, let Deanna
16 know. I can talk to you tomorrow or later this afternoon.

17 - - -

18 C E R T I F I C A T E

19

20 I certify that the foregoing is a correct transcript
21 from the record of proceedings in the above-entitled matter.

22

23 s:/Angela D. Nixon October 29, 2021

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25 Angela D. Nixon, RMR, CRR Date